

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:)	Chapter 11
)	
ORION REFINING CORPORATION,)	Case No. 03-11483 (MFW)
)	
Debtor.)	
)	
FLUOR ENTERPRISES, INC.,)	
)	Adv. Proc. No. 04-52447 (MFW)
Plaintiff,)	
v.)	
)	[Parallel Contested Matter under Fed. R.
ORION REFINING CORPORATION,)	Bankr. P. 9024 and Fed R. Bankr. P. 60(b)]
CYPRESS ASSOCIATES, LLC as ORC)	
DISTRIBUTION TRUST REPRESENTATIVE,)	
)	
Defendant.)	
)	
ORION REFINING CORPORATION,)	
)	
Counter-Claimant,)	
)	
v.)	
)	
FLUOR ENTERPRISES, INC.,)	
)	
Counter-Defendant.)	
)	

**CROSS-DESIGNATION OF ITEMS
TO BE INCLUDED IN RECORD ON APPEAL BY APPELLANT**

Appellant, Cypress Associates, LLC, as ORC Distribution Trust Representative, successor-in-interest to Orion Refining Corporation (“Appellant”), by its undersigned attorneys, hereby submits, pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 8006-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), its cross-designations of items to be included in the record on appeal of the Bankruptcy Court’s Order,

dated May 9, 2006 and entered by the Court on May 10, 2006 (D.I. 69), Opinion, dated May 9, 2006 and entered by the Court on May 10, 2006 (D.I. 68) and the Bankruptcy Court's Order, dated July 20, 2007 and entered by the Court on July 20, 2007 (D.I. 1912; A.D.I. 137).¹

**CROSS-DESIGNATION OF ITEMS TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant hereby cross-designates the following items to be included in the record on appeal:

¹ On July 30, 2007, Appellant filed the Motion Of Cypress Associates, LLC, As ORC Distribution Trust Representative, For An Order (I) Granting Reconsideration, In Part, Of The Court's Findings Of Fact, Opinion And Order, Each Dated July 20, 2007, And (II) Upon Reconsideration, (A) Vacating That Portion Of The Opinion And Order Authorizing Fluor Enterprises, Inc. To Recover Pre-Judgment Interest And (B) Granting Related Relief (Adv. D.I. 138; Bankr. D.I. 1913) (the "Reconsideration Motion") in the above-captioned proceedings. Accordingly, Appellant believes that, pursuant to Bankruptcy Rule 8002(b), Cross-Appellant's cross-appeal is ineffective. Bankruptcy Rule 8002(b) broadly provides that "[a] notice of appeal filed after announcement or entry of the judgment, order or decree but before disposition of any of the above motions [expressly including a motion to alter or amend the judgment under Bankruptcy Rule 9023] is ineffective to appeal from the judgment, order or decree, or part thereof specified in the notice of appeal, until the entry of the order disposing of the last such motion outstanding" and that "[a]ppellate review of an order disposing of any of the above motions, requires the party, in compliance with Rule 8001, to amend a previously filed notice of appeal." Appellant believes that the Reconsideration Motion, which expressly invokes Bankruptcy Rule 9023, is a motion of the type specified in Bankruptcy Rule 8002(b) such that Cross-Appellant's designations are premature. Nevertheless, Appellant has filed its Cross-Designations Of Items To Be Included In Record On Appeal out of an abundance of caution because, although Cross-Appellant's Designation of Record and Statement of Issues on Appeal (D.I. 1927; A.D.I. 156) does not challenge the Bankruptcy Court's Findings of Fact (D.I. 1910; A.D.I. 135) or Opinion Granting Fluor Enterprises, Inc.'s Motion for Relief from Previously Entered Critical Fire and Trade Vendor Orders (D.I. 1911; A.D.I. 136), Appellee has appealed from the Bankruptcy Court's Order, dated July 20, 2007 and the cross-designated items may be relevant to any arguments that Cross-Appellant may make with respect to that Order or the Bankruptcy Court's determination after trial (D.I. 1912; A.D.I. 137). Appellant reserves its right to file designations in support of its appeal at the appropriate time.

Records from Main Bankruptcy Case

<u>TAB NO.</u>	<u>DOCKET NO.</u>	<u>DESCRIPTION OF PLEADING/EVIDENCE</u>
1	1	Chapter 11 Voluntary Petition, filed 5/13/2003
2	229	Order (WITH REVISIONS OF THE COURT) (A) Establishing Bidding Procedures In Connection With Sale of Substantially All of the Assets of the Debtor, Including Certain Buyer Protections, (B) Approving the Form and Manner of Notices, (C) Approving the Form of the Amended Asset Purchase Agreement, (D) Setting a Sale Hearing, and (E) Granting Related Relief, filed 6/12/2003
3	267	Response to The Sale Motion and Proposed Order (A) Approving the Sale of Certain Assets of the Debtor Free and Clear of Liens, Claims and Encumbrances Pursuant to 11 U.S.C. Section 363, (B) Authorizing the Assumption and Assignment of Certain Unexpired Leases and Executory Contracts, (C) Authorizing the Rejection of Certain Unexpired Leases and Executory Contracts and (D) Granting Related Relief, filed 6/19/2003
4	269	Objection to Notice of (I) Debtor's Request for Authority to Assume, Assign and Sell Certain Executory Contracts and Unexpired Leases, (II) Debtor's Proposed Cure Amounts and (III) Debtor's Request for Authority to Reject Certain Executory Contracts and Unexpired Leases Not Assumed and Assigned, filed 6/19/2003
5	336	Order (A) Approving the Sale of Certain Assets of the Debtor Free and Clear of Liens, Claims and Encumbrances Pursuant to 11 USCS Section 363, (B) Authorizing the Assumption and Assignment of Certain Unexpired Leases and Executory Contracts, (C) Authorizing the Rejection of Certain Unexpired Leases and Executory Contracts and (D) Granting Related Relief, filed 6/26/2003
6	357	Notice of Lien / Notice Under Section 546 of Perfection of Lien, filed 7/09/2003
7	372	Transcript of Motions Hearing Held on June 26, 2003, filed 7/15/2003
8	582	Motion to Allow Motion of Fluor Enterprises, Inc. for Allowance and Immediate Payment of Administrative Expense Claim, filed 10/03/2003
9	676	Response to Motion of Fluor Enterprises, Inc. for Allowance and Immediate Payment of Administrative Expense Claim Filed by Fluor Enterprises, Inc., filed 10/30/2003

<u>TAB NO.</u>	<u>DOCKET NO.</u>	<u>DESCRIPTION OF PLEADING/EVIDENCE</u>
10	677	Response to Motion of Fluor Enterprises, Inc. for Allowance and Immediate Payment of Administrative Expense Claim Filed by Fluor Enterprises, Inc., filed 10/30/2003
11	680	Supplemental Response to Debtor's Supplemental Response to Motion Of Flour Enterprises, Inc. For Allowance And Immediate Payment Of Administrative Expense Claim And Reservation Of Rights, filed 10/31/2003
12	825	Limited Objection to Fluor Enterprises, Inc. To Motion For Order Authorizing (I) Retention And Disposal Of Certain Records And Files, And (Ii) Entry Into Agreements With Storage Facilities, filed 12/10/2003
13	1165	Disclosure Statement Disclosure Statement To Accompany Plan Of Liquidation Of Orion Refining Corporation, filed 4/16/2004
14	1166	Chapter 11 Plan of Reorganization Plan Of Liquidation Of Orion Refining Corporation, filed 4/16/2004
15	1198	Motion to Allow Emergency Motion Of Fluor Enterprises, Inc. For Order Fixing Hearing Date, Shortening Notice And Establishing Date For Objections, filed 5/3/2004
16	1204	Notice of Withdrawal Of Motion Of Fluor Enterprises, Inc. For An Order Modifying The Automatic Stay Pursuant To 11 U.S.C. Section 363(d), filed 5/04/2004
17	1206	Motion for Relief from Stay Motion Of Fluor Enterprises, Inc. For An Order Modifying The Automatic Stay Pursuant To 11 U.S.C. Section 362(d), filed 5/03/2004
18	1212	Objection to Disclosure Statement to Accompany Plan of Liquidation of Orion Refining Corporation, filed 5/04/2004
19	1231	Amended Disclosure Statement Notice Of Filing Of Amended Disclosure Statement To Accompany Amended Plan Of Liquidation Of Orion Refining Corporation, filed 5/10/2004
20	1232	Amended Plan, filed 5/10/2004
21	1236	Order Granting Motion of Fluor Enterprises, Inc. to Modify the Automatic Stay, filed 5/12/2004
22	1238	Order Approving Disclosure Statement to Accompany Amended Plan of Liquidation of Orion Refining Corporation, Debtor, filed 5/12/2004
23	1241	Disclosure Statement Disclosure Statement to Accompany Amended Plan of Liquidation of Orion Refining Corporation, filed 5/12/2004
24	1242	Amended Plan, filed 5/12/2004

<u>TAB NO.</u>	<u>DOCKET NO.</u>	<u>DESCRIPTION OF PLEADING/EVIDENCE</u>
25	1311	Limited Objection to Amended Plan of Liquidation of Orion Refining Corporation, filed 6/17/2004
26	1334	Affidavit Declaration Of Steven L. Victor, Chief Restructuring Officer Of Orion Refining Corporation, In Support Of Amended Plan Of Liquidation Of Orion Refining Corporation, Dated May 12, 2004, filed 06/23/2004
27	1338	Debtor's Memorandum Of Law (A) In Support Of Confirmation Of Amended Plan Of Liquidation Of Orion Refining Corporation, Dated May 12, 2004, And (B) In Response To Objections Thereto, filed 06/24/2004
28	1340	Exhibit (EXHIBIT C) Debtor's Memorandum Of Law (A) In Support Of Confirmation Of Amended Plan Of Liquidation Of Orion Refining Corporation, Dated May 12, 2004, And (B) In Response To Objections Thereto, filed 06/24/2004
29	1361	Findings of Fact and Conclusions of Law and Order Confirming Amended Plan of Liquidation of Orion Refining Corporation, Dated May 12, 2004, filed 07/02/2004
30	1368	Findings of Fact and Conclusions of Law Notice of (1) Entry of Confirmation Order (2) Effective Date of Amended Plan of Liquidation of Orion Refining Corporation Dated May 12, 2004, As Modified, (3) Certain Bar Dates for (A) Filing Administrative Claims, (B) Filing Fee Claims, And (C) Filing Rejection Damage Claims And (4) Affected Executory Contracts And Unexpired Leases, filed 07/08/2004
31	1374	Chapter 11 Plan of Reorganization Notice Of Filing Of Conformed Version Of Amended Plan Of Liquidation Of Orion Refining Corporation, Dated May 12, 2004, As Effective, filed 07/08/2004
32	1929	Reply In Further Support Of Motion Of Cypress Associates, LLC, As ORC Distribution Trust Representative, For An Order (I) Granting Reconsideration, In Part, Of The Court's Findings Of Fact, Opinion And Order, Each Dated July 20, 2007, And (II) Upon Reconsideration, (A) Vacating That Portion Of The Opinion And Order Authorizing Fluor Enterprises, Inc. To Recover Pre-Judgment Interest And (B) Granting Related Relief, filed 08/22/07

Trial Exhibits

<u>TRIAL EXHIBIT NO.</u>	<u>DATE OF EXHIBIT</u>	<u>DESCRIPTION OF PLEADING/EVIDENCE</u>
JTX 1	5/12/2003 - 6/9/2003	Constable Notes
JTX 3	5/12/2003	Statement of Claim and Privilege by Fluor Enterprises, Inc.
JTX 4	6/18/2003	Supplemental Statement of Claim and Privilege by Fluor Enterprises, Inc.
JTX 6	5/14/2003	Orion Update Presentation
JTX 7	5/20/2003	Orion Update Presentation
JTX 9	5/10/2003	D. Stinger Email
JTX 10	5/13/2003	H. Pozzo Email, attaching Orion Update Presentation
JTX 12	5/14/2003	Penn Notes
JTX 13	5/16/2003	Penn Notes
JTX 14	5/20/2003	Orion Update Presentation with Penn notes
JTX 15	Undated	Stover Notes
JTX 16	5/16/2003	Pozzo Notes
JTX 17	5/9/2003	S. C. Johnson Email
JTX 18	5/10/2003	S. C. Johnson Email
JTX 20	5/12/2003	J. Tillery Email
JTX 21	5/13/2003	E. Bluth Email
JTX 23	5/13/2003	S. C. Johnson Email
JTX 24	5/13/2003	S. C. Johnson Email
JTX 25	7/13/2004	Valerie Krehmeier Affidavit
JTX 26	Undated	Fluor/PSC Payables Analysis
JTX 29	5/15/2003	Pozzo Notes; Orion Update Presentation
JTX 30	5/16/2003	J. Reynolds Email; Pozzo Notes
JTX 32	5/16/2003	Pozzo Notes
JTX 34	5/20/2003	Pozzo Notes
JTX 35	5/23/2003	A. Schexnaydre Email; Pozzo Notes

TRIAL EXHIBIT NO.	DATE OF EXHIBIT	<u>DESCRIPTION OF PLEADING/EVIDENCE</u>
JTX 41	10/7/2003	V. Krehmeier Email with attachments
JTX 43	5/13/2003	Debtor's Motion for Authority to Pay Certain Fixed Liquidated and Undisputed Prepetition Claims of Fire Vendors, Mechanics and Materialmen (D.I. 14)
JTX 45	5/15/2003	Order Authorizing The Debtor To Pay Certain Fixed, Liquidated And Undisputed Prepetition Claims Of Fire Vendors And Mechanics And Materialmen Pursuant To 11 U.S.C. & 105(a) And 363(b) [Re: D.I. 14] (D.I. 38)
JTX 49	6/24/2004	Confirmation Hearing Transcript
JTX 52	11/21/2006	Affidavit of Steven L. Victor (D.I. 1839)
JTX 56	5/15/2003	M. Stevens Email
JTX 58	3/2/2003	Accounts Receivable Services Agreement
JTX 59		Wire Transfer Confirmations
JTX 60	5/19/2003	K. Scallon Email with attachment
JTX 62	Various	Cost Reports
JTX 68	5/20/2003	Letter from F. Rusich, Jr. to S. Victor
JTX 71	9/4/2003	Orion Pre-Petition Costs Summary
JTX 76	6/10/2003	Orion Update Status Presentation
JTX 83	5/20/2002	Orion Refining Corporation Master Service Agreement Contract Number: 02-1257
JTX 84	2/3/2003	Letter from F. Rusich to T. Landry
JTX 85	2/4/2003	Letter between Orion Refining Corp. and PSC Industrial Outsourcing, Inc.
JTX 87	6/11/2003	E. Bluth Email
JTX 88	7/19/2003	Orion Wrap-Up Meeting Notes
JTX 89	9/8/2003	Letter from J. Reynolds to E. Schwartz
JTX 90	10/1/2003	Letter from E. Schwartz to J. Reynolds
JTX 91	5/15/2003	R. Rayzor Email
JTX 92	6/5/2003	Transcript of Hearing Before Honorable Mary F. Walrath
JTX 93	5/13/2003	Purchase and Sale Agreement Among Orion Refining Corporation, Valero Energy Corporation and Valero Refining-New Orleans, L.L.C.
JTX 95	06/18/2003	Letter from S. Victor to Power Logic (Exhibit A)

<u>TRIAL EXHIBIT NO.</u>	<u>DATE OF EXHIBIT</u>	<u>DESCRIPTION OF PLEADING/EVIDENCE</u>
JTX 96	04/06/2007	Plaintiff's Response to Defendant's Second Set of Interrogatories Directed to Plaintiff
F2	06/04/2004	Fluor Fire Repair Summary

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Dated: August 30, 2007

1223034.3

CERTIFICATE OF SERVICE

I, Thomas W. Briggs, Jr., certify that I am not less than 18 years of age, and that service of the **Cross-Designations Of Items To Be Included In Record On Appeal** was caused to be made on August 30, 2007 upon those parties identified below in the manner indicated.

Under penalty of perjury, I declare that the foregoing is true and correct.

Dated: August 30, 2007

/s/ Thomas W. Briggs, Jr.
Thomas W. Briggs, Jr. (No. 4076)

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

APPEAL TRANSMITTAL SHEET

Case Number: _____ ☐ BK ☐ AP
If AP, related BK Case Number: _____

Title of Order Appealed:

Docket Number: _____ Date Entered: _____

Item Transmitted: ☐ Notice of Appeal ☐ Motion for Leave to Appeal
☐ Amended Notice of Appeal ☐ Cross Appeal
Docket Number: _____ Date Filed: _____

*Appellant/Cross Appellant:

*Appellee/Cross Appellee

Counsel for Appellant:

Counsel for Appellee:

**If additional room is needed, please attach a separate sheet.*

Filing Fee paid? ☐ Yes ☐ No

IFP Motion Filed by Appellant? ☐ Yes ☐ No

Have Additional Appeals to the Same Order been Filed? ☐ Yes ☐ No

If so, has District Court assigned a Civil Action Number? ☐ Yes ☐ No Civil Action # _____

Additional Notes:

Date

By: _____
Deputy Clerk

Bankruptcy Court Appeal (BAP) Number: _____
7/6/06

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